
IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2001
No. 65

J.L. MATTHEWS, INC.,

Petitioner

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,

Respondent

On Appeal from the Circuit Court for Montgomery County, Maryland
On Writ of Certiorari to the Court of Special Appeals

**BRIEF OF AMICI CURIAE MAYOR AND CITY COUNCIL OF THE CITY OF
BALTIMORE, BALTIMORE COUNTY, CAROLINE COUNTY, COUNTY
COMMISSIONERS OF CHARLES COUNTY, HARFORD COUNTY,
MONTGOMERY COUNTY, AND COUNTY COMMISSIONERS OF
WASHINGTON COUNTY, MARYLAND**

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STATEMENT OF INTEREST OF AMICI CURIAE

The amici curiae (Amici) are a group of local government condemning authorities interested in this case because of the importance of the availability of injunctive relief in eminent domain cases. Amici file this brief to direct the Court's attention to the importance of preserving the status quo in condemnation cases where the destruction, misuse, alteration, or alienation of land is threatened to the detriment of the condemnor, and to ask this Court to affirm the decision of the Court of Special Appeals. At the heart of this case is whether a private property owner may subvert a condemning authority's exercise of the sovereign right of eminent domain by changing the landscape of the selected property such that it is no longer suitable, or is suitable only at extreme remedial and wasteful expense, for the public purpose or use for which the property is being acquired.

While some of the Amici have powers of "quick take," the circumstances under which such extraordinary powers may be exercised are extremely limited.¹ Where a condemnor is faced with the prospect of destruction, misuse, or significant change to the land, and quick take is unavailable, injunctive relief is the only means to preserve the integrity of the property for its intended purpose pending completion of the condemnation action.

¹The ability to enter onto property immediately upon making payment into court is commonly referred to as "quick take" or "advance take." Specific provision for this process differs depending upon the exercising authority. Some condemning authorities do not have the authority at all and some have it for limited purposes and for limited types of property, such as property without improvements. *See generally*, Md. Const. Art. III, §§ 40A and 40B.

ISSUE PRESENTED BY AMICI CURIAE

Where condemnation by “quick take” is not available and a condemnor has filed a condemnation action against land and thereafter the property owner undertakes physical changes to the land, which if continued or completed, will render the property no longer suitable for the public purpose or use for which it is sought, may the condemning authority obtain an injunction to preserve the status quo of the land until the jury enters its inquisition for just compensation and awards title to the condemnor?

ARGUMENT

This case involves condemnation of a parcel of land for park/recreation purposes. The condemning authority is the Maryland-National Capital Park and Planning Commission (Park and Planning), a bi-county agency, established by state law with authority for planning and providing recreation and park facilities and engaging in land-planning for the counties it serves. *See* Md. Ann. Code art. 28, § 1-101 (1997). Park and Planning has independent planning boards for Montgomery County and Prince George’s County. It is not an arm of either county and does not issue building permits in Montgomery County.²

Actions taken by Park and Planning in this case have been taken in its capacity as the Montgomery County Planning Board. While Park and Planning has been given authority to acquire land for parks and for other purposes over which it has jurisdiction, it has not been given “quick take” authority—the ability to take possession of land upon payment of the estimated fair market value into court.

Issuance Of The Injunction Was Proper

²Building permits are actually issued by the Montgomery County Department of Permitting Services. Montg. Co. Code §§ 8-24 and 8-25 (1994, as amended).

The Petitioner, J. L. Matthews, Inc. (Matthews), attempts to portray the injunction as a surrogate quick take, arguing that, because Park and Planning did not have quick take power to get immediate possession of the property, it could not obtain an injunction. While quick take would have obviated the need for an injunction, these two legal tools ***do not*** have the same effect. The injunction did not facially or effectively permit Park and Planning to take possession of the land; it only restricted Matthews' attempts to frustrate the acquisition by radically altering the landscape and making the subject property unfit for the public use for which it was sought. Matthews continued to possess the land and could make other use of the land and the existing house. Quick take, on the other hand, specifically permits the condemnor to take possession of the land and to proceed with its project. *State Roads Comm'n. v. Orleans*, 239 Md. 368, 377, 211 A.2d 715, 721 (1964). The injunction against construction issued below accomplished neither of those ends. Instead, it merely maintained the status quo pending a resolution of the justiciable controversy in the Circuit Court, namely, how much just compensation was to be paid for the land. *Harford County Educ. Ass'n. v. Board of Ed.*, 281 Md. 574, 585, 380 A.2d 1041, 1048 (1977).³

This Court has recognized, albeit in a footnote, that injunctive relief may be appropriate to “prevent the destruction, misuse, or alienation of land or an interest therein to the detriment of the condemnor.” *Washington Suburban Sanitary Commission v. Nash*, 284 Md. 376, 383 n.5, 396 A.2d 538, 541 n.5 (1979). Park and Planning filed the

³Amici do not address the elements required to obtain an injunction, but address only the availability of injunctive relief in connection with a condemnation.

condemnation to use the land for park and recreation purposes. It correctly perceived that Matthews was preparing to remove trees (E. 605) and commence excavation and, thus, materially change the land in a manner that: 1) made the land unfit for use as a park, and 2) was economically wasteful because Park and Planning would be required to spend large sums of public money to reverse the excavation and restore the land for use as a park. To allow construction to proceed in the face of the pending condemnation would have frustrated Park and Planning's objectives in seeking to acquire the land. The injunction posed little risk of harm to Matthews, as it received the fair market value of the land.

Although Park and Planning also gave as justification for the issuance of the injunction a concern that the fair market value of the property would increase due to the activities of Matthews, Amici do not suggest that it is ever appropriate to obtain injunctive relief to depress the fair market value of a condemnee's land. To the extent this was part of the lower court's reasoning in granting the injunction, it was harmless error for two reasons. First, there were two legitimate bases given for issuing the injunction, which was limited both in scope and duration and secured by the reservation of \$500,000 by Park and Planning. Second, and perhaps more importantly, Matthews was allowed to show the jury how all of the approvals enhanced the value of its land. Either of the two legitimate bases standing alone would have been sufficient to justify the issuance of the injunction.

The Maryland Rules historically recognized the need to resolve condemnation actions expeditiously. Former Rule U14 provided, in pertinent part, that "[u]pon the motion of any

party the court shall set the case for trial no less than ten or more than thirty days from the date of such motion.” Unfortunately, this rule was omitted when the U Rules were moved to Title 12, Chapter 200 of the Maryland Rules, and the playing field became tilted more heavily in favor of the property owner. Injunctive relief levels that playing field so that, once land is identified for public use and condemnation proceedings have been initiated, a property owner cannot sabotage the acquisition of that land by making changes to it. Injunctive relief is particularly appropriate where, as here, quick take is not available, and the property owner engages in activities that may so alter the property that it no longer will be suitable for the purpose for which it is being acquired, thereby partially or entirely frustrating the public interest. In fashioning the injunctive remedy, the court may balance the equities, requiring the government to diligently prosecute the action or, as here, to post adequate funds to secure the judgment. *See* Md. Rule 15-502 (b). If the governmental entity does not proceed seasonably, the court may dissolve the injunction. Furthermore, the landowner may immediately appeal the injunctive order if the landowner believes that the court erred in granting the injunction. Md. Code Ann., Cts. & Jud. Proc. § 12-303(3) (1998).

Matthews cites *Washington Suburban Sanitary Commission v. Nash*, 284 Md. 376, 396 A.2d 538 (1979), and *Mayor and City Council of Baltimore v. Baltimore Football Club, Inc.*, 624 F. Supp. 278 (D.Md. 1986), to support its position that injunctive relief is not available in condemnation proceedings. Both cases should not be extended beyond the immediate circumstances they addressed as they are distinguishable and inapposite. In *Nash*,

WSSC failed to file its condemnation complaint until after the condemnee had sold the timber associated with the land. Thus, a third party had a property interest in the timber that WSSC sought to acquire. Second, WSSC had quick-take powers and chose not to use them. Third, and related to the second, WSSC did not pay into court or otherwise secure the payment of the fair market value of the timber. In the instant case, Park and Planning does not have quick-take authority, but has reserved \$500,000 to secure payment of judgment of just compensation. Most importantly, the Court recognized that there are condemnation cases, such as the one now pending before this Court, in which injunctive relief would be appropriate.

Mayor and City Council of Baltimore v. Baltimore Football Club, Inc., is inapposite because the property sought to be acquired was not real property, but was chattel that had relocated to Indianapolis, well beyond the borders of the condemning sovereign. The court noted that a sovereign's power to condemn property extends only as far as its borders. 624 F. Supp. at 284. In addition, the court found it significant that the city had filed for injunctive relief without payment of any compensation. The subject property, however, is not transient and Park and Planning has set aside money to satisfy payment of just compensation. More importantly, natural features such as a forest stand, or improvement of historical significance, enhance the public value. In the absence of the injunction, Matthews might have destroyed those assets which, once destroyed, could never be replaced. The

circuit court correctly understood that the need to maintain the status quo ante in this situation was paramount.

Matthews Was Not Harmed By The Injunction

Matthews argues that permitting an injunction in a case such as this will result in a greater taking than otherwise would have occurred and will create a taking of property prior to trial. Matthews claims that it was harmed by the issuance of the injunction and should have been permitted to introduce evidence of its development costs and to have been entitled to recover those costs along with lost profits as damages due to the issuance of the injunction. Matthews is entitled to receive as just compensation the fair market value of its land as a consequence of the condemnation. Inherent in that value as demonstrated at trial is the value contributed by the stage of development Matthews had achieved with respect to the land. Matthews is no more entitled to separate payment for development approvals than it would be entitled to separate compensation for the trees on the land. The correct treatment of these attributes is to consider how they enhanced the fair market value of the land. *Montgomery County v. Old Farm Swim Club, Inc.*, 270 Md. 708, 313 A.2d 458 (1974).

Evidence on this very point was produced by witnesses for both the condemnor and the condemnee. Mr. Matthews (owner of Matthews) testified as to his opinion of value and quite clearly stated that in coming up with his value, he factored in building permits, landscape permits, Washington Suburban Sanitary Commission payments, and other items. (E. 629-30) Douglas Perry, Matthews' expert real estate broker, testified that, in his opinion,

the property is worth \$60,000 per subdivided lot or \$480,000 because it is ready for development. (E. 646) Mr. Perry testified that all the work done by Matthews contributed to the value of the property and was reflected in Mr. Perry's opinion of fair market value.⁴ Likewise, Park and Planning's appraiser, Mr. Pierce, testified that he knew that Matthews was ready to build. (E. 392) Mr. Pierce recognized that a buyer would give credit for tap fees and environmental approvals issued in connection with a development. He further indicated that these costs were part of the finished lot comparables that he used. (E. 396)

Matthews clearly is attempting to be compensated for historic and current costs that it incurred in the development process. These costs are inherent in the values ascribed by both Matthews' own value testimony and in the values given by Park and Planning. Moreover, knowing full well that Park and Planning was going to acquire its land, Matthews persisted with, and perhaps even hastened, its efforts to develop townhouses on the property. It further argues that it would not be made whole if the condemnation proceedings were abandoned pursuant to Md. Code Ann., Real Prop. § 12-109 (1996, 2000 Supp.). The fact is, Park and Planning did not abandon the proceedings.

⁴Although Matthews attempted to put on an appraiser, because the appraiser had not been timely identified and no report presented until two business days prior to trial, the court did not allow the witness.

CONCLUSION

The Court of Special Appeals was correct when it affirmed the action of the Circuit Court for Montgomery County in granting the injunction. For all the foregoing reasons, Amici request this Court to affirm the judgment of the Court of Special Appeals.

Respectfully submitted,

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